

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-AMERICAN)	
WATER COMPANY FOR APPROVAL OF)	CASE NO. 2003-00478
ACCOUNTING ACCRUALS)	

O R D E R

On January 12, 2004, Bluegrass FLOW, Inc. ("FLOW") filed a motion for full intervention in this proceeding pursuant to 807 KAR 5:001, Section 3(8). On February 3, 2004, the Commission issued an Order finding that FLOW had failed to provide the Commission with sufficient information to render a decision on the motion and directing FLOW to file, within 10 days, additional information to support its motion. The Commission specifically directed FLOW to explain how FLOW was likely to present issues that would assist the Commission and to state what expertise, if any, it had to offer in the proceeding. On February 13, 2004, FLOW filed its response.

FLOW contends that the Commission, by its Order of February 3, 2004, has adopted a more rigid standard for full intervention than that which is required by 807 KAR 5:001, Section 3(8), and that the requirements set forth in the Order are unreasonable and unlawful. It argues that since it has been granted intervention in previous cases without these requirements, the Commission is foreclosed from adopting a more rigid standard. It also asserts that, since it has demonstrated its ability to present issues and assist the Commission in past cases, it is entitled to a presumption that it is likely to do so in this case. FLOW further contends that this case is a

“continuing ‘conversation’ or treatment of evolving issues with regard to the ownership, management and control of Kentucky-American” and that denial of its motion will constitute a violation of procedural and substantive due process since it was granted full intervention in prior cases.

Its objections notwithstanding, FLOW responded to the Commission’s Order by asserting that it did have a special interest and that it was likely to assist the Commission. It states that it is a Kentucky non-profit corporation whose purpose is to research, publish, and educate on the comparative benefits of local ownership of water utilities. It states that it represents a number of Kentucky-American Water Company (“Kentucky-American”) customers and that, to the extent these customers reside outside the urban county area, it presents a unique and special interest that is not adequately represented by Lexington-Fayette Urban County Government.

FLOW contends that its intervention will assist the Commission, because it will forestall a number of individual petitions for intervention and thus make the Commission’s consideration “more efficient.”

With regard to its expertise, FLOW claims that, until the issues in this matter are identified and developed, it is unable to predict what expertise is needed or to determine whether such expertise is available to FLOW.

Having reviewed the motion, the subsequent information filed by FLOW, and being otherwise sufficiently advised, the Commission finds that FLOW’s motion should be denied.

Intervention in Commission proceedings is governed by 807 KAR 5:001, Section 3(8), which provides:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding, such person shall be granted full intervention.

The Commission does not agree with FLOW that we have adopted a more rigid standard than that provided by this regulation by simply requesting that FLOW explain how it is likely to assist the Commission or state what expertise, if any, it has to offer in this proceeding. The information requested amounts to nothing more than that which the movant should initially have presented to the Commission in support of its motion.

As to FLOW's claim that it is entitled to a presumption that it is likely to assist the Commission in this case because it has assisted the Commission in past cases, each case and each party's request to intervene in such cases must be considered individually. Moreover, the Commission reminds FLOW that in Case No. 2002-00317¹ the Commission expressed its strong dissatisfaction with FLOW's presentation of witnesses and with the lack of preparation and professionalism exhibited by one of its witnesses. Consequently, the Commission does not believe that a presumption is warranted.

The Commission is also not persuaded by FLOW's statement that this proceeding is a "continuing conversation or treatment of evolving issues with regard to ownership, management and control of Kentucky-American" and does not agree that

¹ Case No. 2002-00317, The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc. For Approval of a Change of Control of Kentucky-American Water Company.

denial of FLOW's motion will constitute a violation of procedural and substantive due process. In its motion, FLOW acknowledged that it endorses local ownership and that this proceeding did not directly involve local ownership and control. Moreover, this proceeding is the result of a Commission directive in its final Order in Case No. 2000-00120,² a case to which FLOW was not a party.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), is a party to this proceeding and is charged by statute with representing the interests of all consumers. FLOW has not demonstrated to the Commission that the customers it represents will not be adequately represented by the Attorney General or that they have an interest different from any other customer of Kentucky-American. In addition, FLOW has failed to demonstrate that it is likely to assist the Commission in rendering its decision.

IT IS THEREFORE ORDERED that the motion of FLOW for full intervention is denied.

Done at Frankfort, Kentucky, this 3rd day of May, 2004.

By the Commission

ATTEST:


Executive Director

² Case No. 2000-00120, Application of Kentucky-American Water Company to Increase its Rates (Order dated November 27, 2000).

